Supreme Court, U.S.
FILED
AUG 27 [illegible]
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-1790

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

AMY McCAIN, A MINOR,
B/N/F WILLIAM R. McCAIN,
WILLIAM R. McCAIN AND
AMY McCAIN,

Petitioners,

vs.

HOUSTON INDEPENDENT SCHOOL DISTRICT,ET AL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY BRIEF

AMY McCAIN
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TO THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, Amy McCain and William R. McCain file this their Reply Brief.

ARGUMENT

I. RESPONDENTS PROCEDURAL DUE PROCESS ARGUMENT IS INAPPROPRIATE SINCE DENIAL OF PROCEDURE WAS NOT THE CAUSE OF THE SUBSTANTIVE CONSTITUTIONAL DEPRIVATIONS

The Houston Independent School District et al (HISD) violated the procedural rights of Petitioners at every stage of the proceedings before them. Procedure, however, had nothing to do with the Substantive Due Process deprivations at the school level, with the possible exception of the denial of the Right To Petition. This is so because Due Procedure was not the producing, efficient, or proximate cause of the violations.

HISD suspended Amy McCain for alleged

acts of misconduct which the hearing officer, vice-principal Busker, admitted he knew she did not commit. Further, he said he suspended her, not because of misconduct, but because he needed more information. (Par. 21, Apx. A46, Apx. 3, A81) Thus, he presumed the power to act as prosecutor, judge and legislator. In Goss v. Lopez, 419 U.S.565, 574, 42 L.Ed.2d 725, 734, 95 S.Ct. 729 (1975) The Supreme Court pointed out that the purpose of:

> ". .fundamentally fair procedure (was) to determine whether the misconduct has occurred."

Since Mr. Busker had decided to act arbitrarily, in defiance of the known facts, denial of Procedural Process was not the cause of the Substantive Due Process violation. Amy was not suspended until the following morning, May 27, when Amy's adult sister questioned Mr. Busker regard- the school authorizing the beer to be brought on campus for a class demonstration.

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II. THIS CASE IS BEFORE THE COURT ON A DECISION REGARDING A MOTION FOR SUMMARY JUDGMENT FOR RESPONDENTS, HISD

> "Both courts have invaded the province of the jury by weighing the evidence alleged in Petitioners' complaint by arbitrarily deciding what part of the Petitioners' complaint and supporting evidence they would choose to believe. (Pet. p. 31)

Respondents refuse to address petitioners' argument on Invasion Of Privacy and, instead, attempt to convince The Supreme Court to treat the Privacy and other substantive issues as a Motion To Dismiss.

Respondents' assertion that "Petitioners' claims of denial of a right to privacy (are) . .not supported by any facts or authority." is absurd. (Res. Br. p. 14)

Equally absurd is their attempt to convince the Supreme Court to adopt the standard of review used in a Motion To Dismiss, when reviewing a Motion For Summary Judgment, then refusing to invade the record on the Substantive Due Process issues. After disposing of the record, HISD says:

"Conculsionary allegations without supporting material facts are not deemed as admitted or true. .and cannot support a cause of action challenged by a Motion To Dismiss." (our emphasis) (Res. Br. p. 11)

HISD points out that they convinced the appellate court to adopt this bizarre scheme:

"The court of appeals further noted that these claims were appropriate for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure." (Res. Br. p. 11)(our emphasis)

The appellate court said:

"The district court also correctly concluded that, even based upon a liberal interpretation of the McCains' pro se complaint they have failed to assert facts supportive of a violation of the right to petition, the right to be free from illegal search and siezure, the right of equal protection or the right to privacy" (Apx. A9, 10)(our emphasis)

The appellate court's justification of the dual treatment of the motions denies Petitioners their right to amend the complaint since res judicata attaches in a Motion For Summary Judgment. (See Apx. A10)

Either this case is here on a Motion for

Summary Judgment or it is not. In their introductory and conclusionary paragraphs, Respondents have tried to convince this Court that this case is here as an administrative appeal; that Amy McCain's complaint was ". .founded on the failure of Respondents to accept Petitioners' version of the facts."

This case is not here on an administrative appeal. It is here on appeal of a Summary Judgment under 42U.S.C. 1983 (1985,86, 88) because of HISD's:

> ". .deprivation of rights, privileges or immunities secured by the Constitution and the laws. .under color of the statutes, ordinances, regulations, custom or usage of the State of Texas and the HISD." (Apx. A38)

A Motion For Summary Judgment places on the "mover" the burden of showing that:

> ". .if this case goes to trial there will be no competent evidence to support a finding for his opponent." Barron & Holzoff, Sum Jdg., Ch. 11, p. 146)

III. THE DISTRICT COURT'S CONVERSION OF THE MOTION TO DISMISS TO A MOTION FOR SUMMARY JUDGMENT HAS NEVER BEEN AN ISSUE IN THIS CASE (Respondents' Issue II)

The Respondents' brief is a series of sham issues in which they attempt to divert the attention of this Court from the real issues. The actual issue was:

> "The Court converted the Motion To Dismiss into a Motion For Summary Judgment on its own Motion without setting a submission date. .as a result the 17 year old minor in this case was required to compose an affidavit and transcribe the rough draft of the memorandum filed on August 8, 1988, in the emergency absence of her father and next friend."

(App. Br. below p. 14,Pet. Br. p. 9)

After the original submission date the Court allowed HISD to amend their motion yet refused Petitioners motion to set a new date, though they knew Mr. McCain was to be out of the country. As a result of the confusion injected by the Petitioners, the 5th Circuitbelieved (see Apx. A9):

> "The McCains also contend that they were not given adequate time to respond. ."

The net result was reversible error:

> ". .a court's failure to comply with the notice provision CONSTITUTES REVERSIBLE ERROR." (our emphasis, 38 Fed. Proc. L. Ed. Sec. 62.577, p. 65. See also Sec. 62:576 p. 64)

V. INVASION OF PRIVACY

Respondents assert at p. 14 that:

"Petitioners' claims of a right to privacy (are). .not supported by facts or authority." (our emphasis)

In support of our argument on Invasion Of Privacy we have cited the landmark case, Pavesich v. New England Life Ins. Co., 50 So. 68 (1905) We have alleged that HISD violated 42 U.S.C 1983 Pet. Br. p. 4, Apx. A38 and that they acted:

". .under color of the statutes, ordinances, regulations, custom or usage of the State of Texas and theHISD. ." (Cpt. Apx. A38)

We quoted the Texas Administrative Code (TAC 19 Sec. 177.1 Sec. (e)(3), (4) in our complaint:

"(3) The educator shall not intentionally expose the student to disparagement.

(4) The educator shall not reveal confidential information concerning a student unless disclosure serves professional purposes or is required by law. (Cpt. Apx. A59)

We quoted HISD Board Policy & Procedure

Sec. 756.000 (e):

"Sec. (e) This section provides for hearings that '. .will be closed to the public' " (Apx. A32, our emphasis)

We alleged that Amy was wrongfully accused of crimes and that:

"Said accusations along with threats of arrest, suspension or expulsion were made in the presence and hearing of students and other people who were neither party to nor essential to the proceedings. With the door to the principals office left wide open, Mr. Brew and Mr. Busker accused Amy McCain and other students'. .of drinking beer. They never asked them if they were; they wouldn't even let the(m) tell their story.' " (Affidavit Apx. A45)

"Defendants' conduct. .was intentional or reckless and so extreme in degree as to go beyond all reasonable bounds of decency and caused the plaintiff severe emotional distress by reason of the acts of intimidation, humiliation and public scorn and ridicule before fellow students, teachers, and other persons. . The defendants. .knew that they were engaging in destructive acts which would cause and in fact did damage Amy McCain's opportunities for higher education along with damage to her employability. .As a resuit of the public accusations some now believe that Amy McCain was arrested and thrown in jail for dope." (Complaint Par. 41, Apx. A62, Apx. 3, A76)

HISD has never denied these charges.

We have added part of the record in Apx.

"3", p.A76 which both the School Board and the federal judiciary refused to consider which states:

> "Now my daughter is expected to return to school and attempt to compete in your accelerated program with a home-room teacher who set in motion the conditions which resulted in the beer keg and beer tapper being brought onto the campus to start with. In addition she is to be under the administration of the Mr. Busker who falsely accused her, slandered her, threatened retaliation, denied her civil rights and threatened her father."

HISD knew the facts on which our Invasion of Privacy theory was based as early as June 24, 1987 when 34 of the 54 pages of record were filed, a record which on July 8, 1987 they claimed they never received. The district record at R. 29 et. seq. says:

> "The principals have violated Article Seven, Student procedures, HISD Administrative procedure, Sec. 756.000, at the sub-sections indicated, in the following respect: . .(Apx. 3, A80,810)
>
> 10. Mr. Busker violated Amy McCain's Constitutional right to privacy by failing to make her initial 'hearing' of 5-26-87 '. .closed to the public.' (e., TAC 19 Se. 177.1(e)(3)(4) Code of Ethics)

11. Mr. Busker made statements on May 26, 1987 about Amy Elizabeth McCain that were slanderous per se and were not privileged because said statements were made before students who were neither party to, privy to, nor essential to the proceedings taking place. (TAC 19 Sec. 177.1)

12. Mr. Busker made accusations against Amy Elizabeth McCain which he believed to be untrue. (TAC 19 Sec. 177.1 Code Of Ethics)

There is simply no question that Petitioners complaint was well-conceived and well-crafted. We are in an age when governmental privateering is on the increase. When the motivation for this privateering turns from greed to the abuse of Classes of American Citizens then liberty itself comes under attack.

In this case the Invasion of Amy McCain's Privacy was immediate, direct and irretrievable at the time it was committed. Procedure was neither the producing, efficient or proximate cause of the constitutional deprivation, nor could it redeem the irreparable damage inflicted on the

reputation of Amy McCain. Regarding denial of Substantive Due Process rights under the Fourteenth Amendment the Supreme Court has said:

> "There could be no clearer violation of the Amendment or the statute. No act could be more final or complete, to denude the victim of rights incurred by the amendment's very terms. Those rights so destroyed cannot be restored. Nor could it restore what the federal power shielded. Neither acquittal nor conviction, though affirmed by the state's highest court, could resurrect what the wrongful use of state power has annihilated. There was in this case abuse of state power, which for the Amendment's great purposes was state action, final in the last degree, depriving the victim of his liberty and his life without due process of law." Screws v. United States, 325 U.S. 115, 117, 18 L.Ed. 1510, 1511 (1944)

The landmark case of Invasion of Privacy Pavesich v. New England Life Ins. Co. (supra) said:

> "When the law guarantees to one the right to enjoyment of his life, it gives to him something more than the mere right to breath and exist. While of course, the most flagrant violation would be deprivation of life, yet life itself may be spared, and the enjoyment of life entirely destroyed." (p. 70)

IV. BOTH HISD AND THE FEDERAL JUDICIARY HAVE DENIED PETITIONERS' RIGHT TO PETITION.

The fragile nature of Respondents' case is emphasized by their efforts to confine consideration on this Motion For Summary Judgment to the ". .allegation(s) in Petitioners Complaint:. (Resp. Issue V, p.11) They attempt to show that Amy McCain had no Right To Petition the school board by misquoting the Texas Education Code. At page 11 they quote Sec. (f) 21:3011:

> "(f) A student's parent or guardian is entitled to notice as soon as reasonably possible of a suspension or removal of a student to an alternative education program and an opportunity to participate in a proceeding (before the board) under this section."

They conveniently omit the parenthetical section above. They then state that this section applies to ". .suspensions of six days or more." By definition "Suspension for a total of more than six school days.. is considered an expulsion.." Had the Texas ligislature meant "expulsion" they

would have said "expulsion". (Pet. Br. p.5)

Procedural Due Process in this case was not a search for truth, rather, it was used in the appellate procedure to:

> ". .isolate students in the school invironment from the protection of their parents and natural guardians, and from the protection provided by the laws of Texas and from the state and United States Constitutions." (Cpt. par.12 Apx.41)

> ". .the..policies and procedures were designed to and did. .in fact eliminate appeals before the School Board in student disciplinary cases." (Cpt. par. 33 Apx. A55 et. seq.)

We alleged at paragraph 33(d):

> "The defendants failed and refused to protect the actual record or otherwise failed to preserve or consider the actual evidence, or accurately document evidentiary submissions, transcripts, petitions, briefs or other parts of the record, by failing to keep a record of said events or to lie about the filing or existence thereof."

Defendant Les Sumrall, head of Board Services lied about not receiving the Petition and the 34 pages of record. (Apx.3,p. A67,68) His secretary signed the receipt stating:

"Appeal, assignment of errors, Facts

and arg ument--a total of 17 pages and transcript with 20 pages." (Apx.3,A66-69)

VI. "THE DUE PROCESS CLAUSE. .FORBIDS ARBITRARY DEPRIVATIONS OF LIBERTY, !WHERE A PERSON'S GOOD NAME, REPUTATION, HONOR OR INTEGRITY IS AT STAKE BECAUSE OF WHAT THE GOVERNMENT IS DOING TO HIM.' " Goss v. Lopez, 419 U.S. 565, 575, 42 L.Ed. 2d 725, 735, 95 U.S. 729

The Respondents claim that the Court Of Appeals- -

". .did not intend to declare the Fourteenth Amendment to be void." (Res.Br.2)

Whatever their intentions, they did precisely just that by both word and deed. The quotation from Wood v. Strickland, 420 U.S. 326 (1975) was used to support the paragraph immediately preceeding it. The clear implications of the misquote and the paragraph it supported were pointed out to the Fifth Circuit in both the Motion For Rehearing and the In Banc Suggestion:

"This Court now tells Amy McCain whether she was 'drinking beer' or '. .Whether she was holding a cup of beer is not a question of material fact concerning the issue of procedural due process or concerning any other potential basis for relief.' (Opin. Apx. A12)

> the '. .other potential relief' just happens to be the entire body of Subtantive Due Process rights of which American Citizens are possessed under the 5th and 14th Amendments to the Constitution."

The 5th Circuit's quote above was no "Typographical Error." It was in direct response to the Appellants' (Petitioners') reply brief which said:

> "The complaint is that HISD THROUGH BART BUSKER DENIED HER LIBERTY INTERESTS IN REPUTATION AND HER PROPERTY INTEREST IN AN EDUCATION FOR AN ALLEGED ACT OF MISCONDUCT WHICH THEY KNEW SHE DID NOT COMMIT.
>
> The procedural niceties which they may or may not have followed are immaterial . .Suspensions under HISD'S unwritten policies were not used primarily as a punishment, innitially, rather they were used as an investigative tool to extort confessions and evidence from students.' " (Res. Br. p. 3 below)

The technique which HISD used to strip students of their constitutional rights is not new. Now, it has been endorsed by the Fifth Circuit Court of Appeals, and this is no typographical error. We alleged in our complaint that:

> '. .The Houston Independent School Dis-

> trict has in effect a wholly illegal policy which was intended to and did, in fact, isolate students in the school environment from the protection of their parents and natural guardians, and from the protection provided by the laws of the State of Texas and from the state and United States Constitutions." (Comp't Apx. A41)

We pointed out that the HIDS Board unlawfully delegated the power to act arbitrarily, by engaging in a policy which:

> ". .placed exclusive control of disciplinary policies or procedures in the hands of local school authorities, including Lamar High School. The purpose of said policy was to circumvent the law and to deny students, their parents and representatives access to and benefit of Federal and State Constitutional protections as well as state law and Texas Education Agency and HISD regulations, policies and procedures." (Comp. Apx. A42)

Lord Acton said, 'Power tends to corrupt and absolute power corrupts absolutely." Accordingly, our founding fathers provided for the separation of power into the three branches of government, and a devision of power between the states and federal governments. Usurpation by, or improper delegation of that power to the judiciary

resulted in the "Star Chamber". Absolute power vested in the legislative branch results in "Attainer." The vesting of total power in the executive or administrative branches is "Tyranny".

In In Re Gault, 387 U.S. 1, 18 L. Ed.2d 565, 95 S. Ct. 729 this Court observed the danger of absolute power in the judiciary, when youths are involved, quoting Dean Pound, who said:

> "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts. ."

In Joint Anti-Fascist Refugee Com. v. McGrath the Supreme Court held that even the United States Attorney General is accountable for abuse of power:

> ". .the Attorney General has attempted to delegate to himself the power to act arbitrarily. We cannot impute such an attempt to the nations highest law enforcement officer any more than we can to its President" 341 U.S.123, 138, 95 L. Ed. 817, 837

On page 144 Mr. Justice Black wisely observed:

"It is true that the classic bill of attainer was a condemnation by the legislature following investigation by that body. .But I cannot believe that the authors of the Constitution, who outlawed the bill of attainer, inadvertantly endowed the executive with power to engage in the same tyranical policies that made the bill of attainer such an odius institution."

There was no claim, evidence or finding that Amy McCain fit the mandatory provisions cited in Par. 22, (Apx. p.A47) of our complaint. Nor do they deny that Amy was not guilty of the misconduct charges which they did make.

The Supreme Court in Wood v. Strickland (supra p. 323) cited Thompson v. City of Lousville which held:

"Just as 'conviction upon a charge not made would be sheer denial of due process' so it is violation of due process to convict and punish a man without evidence of guilt." 362 U.S. 199, 206, 80 S. Ct. 624, 4 L.Ed2d 654 (1960)

The Fifth Circuit held that whether Amy McCain was guilty of the charges made,

". .is not a question of material fact concerning the issue of procedural due process or any other potential basis for

relief." (App. Opin. Apx. p. A12)

To protect the Constitutional Rights of a foot shuffling bar patron who was fined $20 then deny Equal Protection to 40 Million minor Americans would be a:

> ". .plain denial of equal protection of of the laws- -an invidious discrimination." In Re Gault (supra p. 61)

CONCLUSION

This Court has said:

> "An 'appropriate' governmental 'determination' must be the result of a process of reasoning. It cannot be an arbitrary fiat contrary to the known facts. This is inherent in the meaning of 'determination'. It is implicit in a government of laws and not of men." Joint Anti-Facist v. McGrath (supra) U.S. p. 136

The defendants suspended Amy McCain for acts of misconduct that they admit she did not commit. Defendants did not even claim that they complied with paragraph 22 (Apx. p. A47) which sets mandatory standards for suspensions. They have never claimed that they addressed Amy McCain's Petition to the HISD Board, the arguments or the record submitted therewith. They simply ignored

the Grievance Petition under Board Policy Sec. 740.100 (Apx. 3, p. A74) The 5th Circuit Court has misquoted the Supreme Court and embraced a system of tyranny which is inconsistent with democratic institutions.

In Tinker v. Des Moines Com. Sch. Dist. (supra) p. 511 the Supreme Court said:

> "In our system, state operated schools may not be enclaves of totalitarianism."

There is no justification of federal or state officials' conduct in this case.

> "He who defies a decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did."

> "The problem is not whether state law has been violated but whether an inhabitant of a State has been deprived of a federal right . . one who acts under 'color' of law may be a federal officer or a state officer. He may be under 'color' of federal law or of state law." Screws v. U.S. (supra) pp. 104, 108

Petitioners respectfully move that their Petition for Writ of Certiorari be granted.

AMY McCAIN, Pro Se
WILLIAM R. McCAIN, Pro Se
P.O. Box 52163
Houston, Tx 77052
713-222-6570

DS

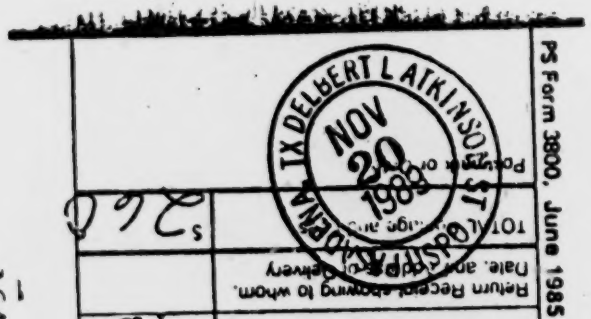
November 19, 1989

Clerk
U. S. COURT OF APPEALS 5th Cir
For the Fifth Circuit
600 Camp Street
New Orleans, LA

IN RE: Amy McCain and William R. McCain v. Houston Independent School district, Case No. 88-2992
~~Consol~~

Dear Sir:

I am enclosing Appellantt' Combined Motion To Amend which I request that you show filed.



Sincerely yours,

WILLIAM R. MCCAIN

(APPENDIX 3--PART OF THE RECORD)

A64

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

GILBERT F. GANUCHEAU
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

December 1, 1989

Mr. William R. McCain
8001 W. Tidwell, Ste. 920
Houston, TX 77040

No. 88-2992 Amy McCain v. Houston Independent School District, Et Al.

Dear Sir:

In light of this Court's order of November 28, 1989 denying your petition for rehearing, we have been authorized to return herewith, unfiled, your combined motion to amend motion for rehearing and motion to substitute parties nunc pro tunc. (underlining ours)

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

A65

BEST AVAILABLE COPY

IN RE: AMY ELIZABETH McCAIN
b/n/f William R. McCain
parent and natural
guardian

MOTION FOR CONSOLIDATION
AMENDMENT OF
PETITION FOR A PROCEEDING
AND BRIEF

Comes now the petitioner and amends by interlineation her Petition for a proceeding before the Board in the following respects:

1. Petitioner amends her petition at line ten by substituting the citation "Sec.:3011(e)", the citation "Sec. 301.(f)";

2. Petitioner amends her Argument as follows:

(a) In line six the citation "Sec.:3011(c)" should read

A66

the remedies sought.

The petitioner renewsher requests in her petition filed before the Board on June 26,1987 and prays that this matter be set before the Board as soon as possible

AMY ELIZABETH McCAIN, Petitioner,
b/n/f William R. McCain, parent and
natural guardian.

William R. McCain
2411 South Boulevard
Apt 3
Houston, Texas, 77098
713-523-0634

Recd
Dr Gen'l
7/8/87
Document rec'd
Document transmitted

A67

Re: Amy Elizabeth McCa

Received on 6-24-87

appeal, assignment of errors
Facts and argument a total
of 17 pages
and
Transcript with 20 page
this 24 day of June 1987

A68

Transcript with 20 pages
this 24 day of June 1987

Second. No assurance
given that this is appropriate
level at this time.

Terry D. Bryan

A69

(GRIEVANCE AND MEMO, NOT CONSIDERED BY HISD)

BEFORE THE
HOUSTON INDEPENDENT SCHOOL BOARD

IN RE: AMY ELIZABETH McCAIN
b/n/f William R. McCain
Parent and Natural Guardian

APPEAL

Comes now Amy Elizabeth McCain, b/n/f William R. McCain and appeals to the Houston Indepent(sic) School Board the decision of Ray Reiner, Lamar High School Principal, rendered on June 11, 1987, holding that the grievant had no standing to file a grievance.

The petitioner appeals to the Board under Sec. 740.100 HISD Board Policy, Art 7 for failure of the Cluster Manager and General Superintendant to act within the time limits set for in said section.

The petitioner requests that this Board take the following remedial actions:

1. Restrain Mr. Bart Busker, Assistant Principal, from taking any direct or indirect actions against my daughter, Amy Elizabeth McCain;

2. Change the home room teacher of Amy McCain;

3. Instruct the administrative officials to refrain from engaging in any retaliatory actions against Amy McCain;

4. Take whatever action is appropriate against said parties by reason of their threatening attit(u)des and violation of petitioner's constitutional rights;

5. In the event that Dr. Stripling or some other party reverses the suspension decision, that Amy McCain be furnished an exculpatory letter and appology for the outrageous treatment of her;

6. Petitioner further requests that the Lamar administrator(s) refrain from any disciplinary actions against the said Amy McCain unless and until her parent or other legal representative is present with the exception of emergency removal as provided in Texas Administrative Code, Ch. 133, p.9, Sec. (c), (1) and (2).

(sig) William R. McCain
AMY ELIZABETH McCAIN,BNF
William R. McCain, Parent
and Natural Guardian

MEMORANDUM

On or about July 16, 1987 I recieved the enclosed letter which I will refer to as Student's Exhibit "N".

This letter from Edward L. Cline, Assistant Superintendant refers the matter of

Amy Elizabeth McCain to Dr. Kay Stripling Superintendant of District XIV. This letter makes no reference to the status of the grievance against Vice-crincipal Bart Busker and Lamar High School principal Ray Reiner.

There are two proceedings before the Houston Independant School District.

1. The decision of Mr. Bart Busker, Assistant-principal's suspension of Amy Eizabeth McCain and its affirmation by Principal Ray Reiner.

2. The grievance filed against Mr. Busker and Mr. Reiner.

1. The suspension proceeding:

On August 14, 1987, 55 days after the suspension of Amy McCain, an appeal was heard at Dr. Stripling's office. Although I was advised that this was an appeal on the record (not an evidentiary hearing) evidence was permitted over the objection of this petitioner. The hearing was recorded.

Sec. 753.400(f) provides:

"At the hearing on appeal, the next superior officer shall conduct a de novo hearing attended by school officials, the student, and his parent or guardian. The next superior officer will determine whether the student shall be suspended or expelled or be reinstated. . Appeals above this level shall be apprals on the record: no new evidence may be introduced." (our emphasis)

An evidentiary hearing was held before Mr. Busker and appealed de novo to Mr. Reiner in May 1987 and any further appellate procedures should have been made on the established record only. Further Sec. (g) provides for a direct appeal to the Board and not to the cluster administrator or the General Superintendant.

On July 8, 1987 we petitioned that the appeal be set before the Board and the Board failed to take any action.

2. The grievance procedure:

Your grievance procedures provide a 5 day period to set a hearing and another 5 days to make a decision. If no decision is rendered the grievant may automaticly

appeal to the next level. Sec. 740:100 HISD Policy says, "The number of days indicated at each level shall be considered a maximum."

The case has been before the General Superindendant since July 7, 1987 well over the 10 days set as m(a)ximums by your by your own rules.

The above section additionally states:

> "All time limits herein shall consist ot school days except that when a grievance is submitted on or after May, 1, time limits shall consist of calendar days so that the matter may be resolved before the close of the school term or within 30 days thereafter." (our emphasis)

The grievance was filed June 10 and we have yet to find one school administrator making a decision on the merits.

The Board already has a copy of the grivance in its possession and we are incorporation this copy by reference in our ap= peal to you and request that you meet with us.

3. Summary of Grievance:

(a) One of your teachers assigned a student a class project which involved the fabrication of a beer tapper for a keg of beer. That student apparently brought a keg of beer on the Lamar High School Campus in order to demonstrate the tapper;

(b) Amy McCain has been accused of drinking beer and "Possion (sic) of a cup of beer. ." Your Vice-principal, Mr. Bart Busker, told me on 5-27-87 that he was going to accuse her of "Possession of a cup of beer", although he knew that she did not have said cup of beer;

(c) On 5-27-87 your Mr. Busker in an angry and antagonistic manner threatened to retaliate against my daughter because of my objection to his making an accusation against her which he had reason to believe was untrue:

(d) The HISD through its agents and employees has totally failed to provide my daughter the most basic due process of law and thereby violated her civil rights;

(e) Your Mr. Busker did on 5-26-87 falsly and slanderously accuse my daughter of a crime in the presence of witnesses who were neit her privy to nor necessary to the proccedings (sic) at hand;

(f) Your agents, administrators and employees have refused to accept or act on the grivance filed 74 days ago although your Board Policy and Procedures mandate

PETITION TO BOARD (SEE A66 THROUGH A 69)

IN RE: AMY ELIZABETH McCAIN, Petitioner b/n/f/ William R. McCain, Parent and Natural Guardian

Comes now Amy Elizabeth McCain, by next friend, William R. McCain and petitions the Board for a proceeding before the Board, Pursuant to State of Texas, Acts 1986th Leg., 2nd C. S. Ch. 4, Sec. 2, in Sec. 21:3011(e), at the Board's earliest convenience.

Petitioner further petitions, moves and requests that the Board advise the petitioner as to:

(1) The nature of the proceeding described in Sec. 31.301(f);

(2) Whether said proceeding is in the nature of an appeal, trial de novo, or some other entity;

(3) Whether there are any policies, procedures, or other statements or written materials regarding said proceeding.

Petitioner further moves that all tape recordings made between, the petitioner or her representatives and Lamar High School

Principal Ray Reiner, be transcribed and furnished to petitioner.

The Board is advised that an appeal is being filed coincidently with Dr. Kay Stripling in order to avoid an improper election of procedural remedies since such remedies are not apparent to us.

Petitioner prays for a finding in favor of the petitioner and that all references to this proceeding and all records of the student at the local school be expunged and for all other proper relief in the premises.

AMY ELIZABETH McCAIN, b.n.f
William R. McCain, Parent
and Natural Guardian
(sig. William R. McCain)
William R. McCain, Pro Se
2411 South Boulevard
Houston, Texas77098
713-523-0634

ASSIGNMENT OF ERRORS

The HISD through its agents, employees, designees and principals have violated the 1st, 5th, 4th, and14th Amendments to the

a decision within 30 days, thereby violating my daughter's constitutional right to petition;

(g) Both your Mr. Busker and Principal Reiner have threatened me with law suits if I proceed to represent my daughter's legitimate interests;

(h) On 8-14-87 while attempting to present my argument to Dr. Stripling, the hearing officer regarding the suspension appeal, I was interupted by Mr. Busker. I advised him that I was not talking to him. He answered in a confrontational manner "Are you afraid to talk to me, Mr. McCain." Taking in consideration his menacing look and manner I interpreted this statement to represent a threat of bodily harm to me;

(i) Because of your Mr. Busker's slanderous accusations, information has come back to my daughter that other students believe my daughter was expelled from school for a semester for using illegal drugs and arrested and taken to jail;

Now my daughter is expected to return to school and attempt to compete in your accelerated program with a home room teacher who set in motion the conditions which resulted in the beer keg and tapper being brought onto the campus, to start with. In addition she is to be under the administration of the Mr. Busker who falsly ac-

cused her, slandered her, threatened retaliation, denied her civil rights and threatened her father.

(The remainder of this Memorandum has to do with our prayer for relief)

Constitution of the United States and their Texas equivalents.

The principals have violated Article Seven, Student procedures, HISD Administrative Procedure, Sec. 756.000, at the subsections indicated, in the following respects:

1. They have failed to provide an impartial hearer of the facts. (Exhib.A, (b)

2. They have failed to record the hearing before Bart Busker after a formal request to do so. (d, Exhib.A)

3. The hearing officers did not present competent evidence in support of their allegations, nor did they present the accusing witnesses for testimony or cross examination. (i.(3), j, g,)

4. The hearing officers failed to advise the petitioner of the nature of the hearing, the issues to be decided or to provide written findings on decisions. (a. k.)

5. The Principals failed to furnish, in advance, the names of the administration's witnesses together with a general description of their testimony. (i.(3))

6. The principals failed to present a case against Amy McCain. There was

neither substantial nor competent evidence presented in support of their case against Amy McCain. (i.(3), j.)

7. The hearing members took into consideration incompetent evidence or information, accumulated in secret, which was not presented at any hearing. (j.)

8. The principals failed to make a decision specific enough so that a reasonable person could be advised of the finding and know what to appeal at the next level.(k.)

9. The principals failed to advise the petitioner as to how to appeal their alleged decision or of the existence of a grievance system or form. (k. Sec 740.10, et seq, and 740.20, et seq)

10. Mr. Busker violated Amy McCain's Constitutional right to privacy by failing to make her initial 'hearing' of 5-26-87 '...closed to the public. (e., TAC 19 Se. 177.1(e)(3)(4) Code of Ethics)

11. Mr. Busker made statements on May 26, 1987 about Amy Elizabeth McCain that were slanderous per se and were not privileged because said statements were made before students who were neither party to, privy to, nor essential to the proceedings taking place. (TAC 19 Sec. 177.1 (e)(3)(4)

12. Mr. Busker made accusations against Amy Elizabeth McCain which he believed to be untrue. (TAC 19 Sec. 177.1 Code of Ethics(e)(6))

13. Mr. Busker proceeded under'Attachment 5, November 12, 1986, SUSPENSION OF STUDENTS", an unconstitutional policy, which he knew was obsolete. (TAC 19 Sec. 177.1 Code of Ethics, "ethical conduct toward students" (e)(2))

14. Mr. Reiner on 6-11-87 says, "You do not have a standing to file a grievance against the principal"(Student's Exhibit J-1) [w]hich statement is not true.(Art. 7 , HISD Board Policy 251.00)

15. Mr. Busker and Mr. Reiner failed to adhere to HISD Board Policy 252:00 which provides:

> "The Board or its designee may not suspend...the student except as provided in board Policy section(s)...756.00."

16. Mr. Busker and Mr. Reiner failed to adhere to HISD Board Policy Sec. 251 which provides:

> "Discipline shall be administered in accordance with guidelines published in the Board-approved 'Code of Student Conduct': Your Rights and Responsibilities."

17. Mr. Busker and Mr. Reiner violated the Texas Education Code, Sec. 21:301 (b)(1) and (2) by suspending Amy McCain without the mandatory determination (and student-parent notification) that:

> "(1)the student's presence in the regular classroom program or at the home campus presents a danger of physical harm to the

student or to other individuals; or

"(2) that the student has engaged in serious or persistant misbehavior that violates the districts perviously [sic] communicated standards of student conduct."

18. Mr. Busker and Mr. Reiner failed to adhere to HISD Board Policy (Art7, 752.000; as reflected in the third paragraph on page 13, Code of Student Conduct, which said policy was mandated by Texas Education Code Sec. 21:301 (b)(1)(2)

(sig. William R. McCain)